IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

Description of case

Jail App. No. 104 of 2001 , decided on 16.06.2001

Kishan Ram

Vs.

State

A.F.R. (Approved for reporting) AFR

Not approved for reporting

Date 16.06.2001 Initials of Judge

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Reserved

Jail Appeal No.104 of 2001

Kishan Singh …… Appellant

Versus

State of Uttaranchal …… Respondent

……..

Hon. A.A.Desai,C.J.
Hon.M.C.,Jain,J.

(Delivered by Hon'ble M.C.Jain,J.)

The appellant is one Kishan Ram who has preferred this appeal from jail. He has been convicted u/s 302,I.P.C. and sentenced to undergo life imprisonment for committing the murder of his wife. He was tried in S.T.No.37 of 1999 by the Sessions Judge, Pithoragarh, who passed the said judgment on 6.9.2000.

A short resume of relevant facts is necessary. The appellant was residing with his wife and children in village Digara,Patti Bagari, District Pithoragarh. His mother had died 11-12 days before the incident which occurred in between the night of 18/19-4-1999 at his house. It was 12th day of the death of his mother. As per the custom prevailing in hills and the caste of the accused /appellant, it was necessary for some of the neighbours and relations to stay in the night at his house so as to keep away the evil spirits. For that reason, Gopal Ram,P.W.2, Laxman Singh P.W.4, Fakir Ram and Diwani Ram had stayed at his house during the intervening night of 18/19-4-1999. The house of the accused-appellant consisted of three rooms built on the slope of the terrace of the hill. For some time during the night, the accused-appellant remained with the above named persons in the lowest room, whereafter he went to the upper room in which his wife and children were also sleeping. At about 2 or 2.30 a.m., the said persons heard the cries of weeping and wailing and some cutting sound. They rushed up to the upper room through wooden stairs and saw the accused having a DAU(cutting weapon) in his hand and assaulting his wife. They also noticed an axe lying nearby. Accused-appellant threatened them of their lives if anybody dared to enter the room. It deterred them from entering the room. Gopal Ram P.W.2 asked Laxman

Singh,P.W.4, Govind Ram and Bhagwan Ram to go and inform the Pradhan of the village. To prevent the escape of the accused-appellant from the room of occurrence, it was latched from outside. Laxman Singh P.W.4, Govind Ram and Bhagwan Ram reached the Pradhan Smt. Pushpa Saun, P.W.2 at about 4 a.m. and informed her about the incident. She came to the scene of occurrence and found that a number of neighbours had collected there, but she was also threatened by the accused that she would be axed if she attempted to enter inside the room and see the dead body. She wrote down the F.I.R. Ex.Ka.1 and gave the same to Bhagwan Ram and Govind Ram to take it to the Patwari. She stayed there till the arrival of Patwari. The accused-appellant was apprehended. Weapons of offence i.e. axe and Dau were recovered. The investigation was taken up with the preparation of Panchayatnama, site-plan,etc. Burnt clothes were also recovered from the scene of occurrence. The dead body, after being sealed, was sent for post mortem. The statements of witnesses were recorded. Ultimately, the accused appellant was charge-sheeted.

It may be stated here that post mortem over the dead body of the deceased was conducted by Dr. M.D.Bhatt P.W.3 on 20.04.1999 at 1.30 p.m. The deceased was about 30 years of age and was a average built. Rigor mortis had passed off from the upper and lower extremities. There were also signs of burning of skin. Following ante mortem injuries were found on her person.

1. Incised wound over scalp left paritetal region size 5 cm X 1 cm. bone deep.
2. Incised wound over left parietal region just above injury no.1 size 6 X 1cm. Bone fractured underneath.
3. Incised wound left face on mandibular region size 3 cm. x 2 cm. muscle deep.
4. Incised wound over left side neck just below injury no.3 size 11 cm. X 4cm.bone deep.
5. Incised wound over left side of neck just .5cm. below injury no.4 size 12 X 4cm. bone deep.
6. Incised wound over just below injury no.5 size 13 X 4 cm. bone deep.
7. Incised wound over left side of deltoid region size 7 X 3 cm. muscle deep.
8. Multiple contusions over, above and below injury no.7.
9. Incised wound over left arm antro lateral aspect 3 cm above from wrist joint. Size 7 X 2 cm.
10. Incised wound over just below injury no.9 size 6 cm X 2 cm. muscle deep.
11. Incised wound over left wrist posterior aspect 4 cm. X 2 cm. muscle deep.
12. Incised wound over right forearm anterior aspect size 5 X 2 cm. bone deep.
13. Incised wound over right forearm below injury no .12 size 4 X 1 cm. bone deep.

14. Incised wound over little finger right dorsal aspect size 5 X 1 cm. bone deep.

At the trial, the prosecution examined six witnesses. Out of them,P.W.2 Gopal Ram and P.W.4 Laxman Singh were eye witness of the incident.

The accused-appellant denied the prosecution story and his defence as per his statement u/s 313,Cr.P.C. was that in the evening at about 5 p.m. he had gone to the village for collection of contribution(Chanda) at about 10-10.30 p.m.,Diwani Ram,Govind Ram and Fakir Ram called him from the house of Trilok Singh Dhami. All of them came together to his house. They stayed in the court-yard and he went to the upper storey where he found the dead body of his wife. He shouted aloud demanding who had committed her murder, but they fled away with his children. For the whole of the night he remained there all alone. In the morning, Pradhan of the village came there with other persons and he was apprehended on the pretext that he had committed the murder of his wife. He also stated that dead body of his wife was lying near earthen stove and she had got burnt also. However, no evidence was adduced by the accused-appellant in his defence.

On judicial appraisal of the evidence on record, the learned Sessions Judge found the case of the prosecution to be established to the hilt and he accordingly convicted the sentenced the accused-appellant as stated in the earlier part of the judgment. Aggrieved, the accused has preferred the appeal from jail.

We have heard learned amicus curiae appointed to argue out the appeal on behalf of the appellant and the learned A.G.A. We have also carefully waded through the evidence on record.

The argument of the learned amicus curiae is that the accused-appellant had falsely been implicated on the premise of suspicion and that someone else committed the murder of his wife. It has also been urged that as per post mortem report and the testimony of P.W.3 Dr. M.D.Bhatt, decomposition had started. It has been pointed out that he conducted the post mortem on 20.04.1999 at 1.30 p.m. and death could have occurred three days before. So far as the so called inconsistency between the prosecution case as per the eye witnesses and the medical evidence is concerned, we do not see any contradiction which could be taken benefit of by the accused-appellant. It has to be kept in mind that as per eye witnesses, the incident took place in the night of 18/19-4-1999. This factum is

rather admitted of the accused-appellant also in his statement u/s 313,Cr.P.C. As per his own statement u/s 313,Cr.P.C. his wife was alive at about 5 p.m. when he had left for the village to collect subscription and he found her lying dead when he returned at about 10 p.m. He admits his arrest from the spot in the morning. Therefore, the argument cannot be build up that the death could have occurred three days before 20.04.1999 on which date post mortem had been conducted. There is categorical statement of the Doctor to this effect that the death could have occurred in between the night of 18/19-4-1999 between 2 a.m. and 4 a.m. It appears that because of some confusion he happened to write in post mortem report that the death could have occurred there days before. As a matter of fact, the medical evidence reconciles with the ocular version in that as many as 14 incised wounds had been found on the person of the deceased. It would be recalled that as per the eye witnesses, the accused had made use of sharp edged weapons Dau and axe to assault his wife. Signs of burning of skin were also there, indicating that he even tried to burn his wife after mercilessly committing her murder. It may be stated at the risk of repetition that he mentioned in his statement u/s 313,Cr.P.C. that she had got burnt also. To come to the point, there is not conflict between ocular version and medical evidence.

We note that the eye witnesses were subjected to searching cross-examination, but no meaningful contradiction could be elicited. The prosecution could also not show that any of the eye witnesses was inimical to the accused-appellant or had any amicus to depose against him. Rather,P.W.2 Gopal Ram, is his close relative. P.W.1 Smt. Pushpa Saun, Pradhan who had reached the scene of occurrence on being informed by Govind Ram, Bhagwan Ram and Laxman Singh had found the accused-appellant to be there and she had been threatened by him not to enter the room in which the dead body of his wife was lying. She, too, did not have any enmity with the accused-appellant. P.W.5 Kedar Datt had also reached the scene of occurrence and had found the accused there.

It may also be pointed out that on chemical examination the axe and Dau(weapons of offence) recovered from the spot were found to be containing human blood. T-shirt and pant of the accused-appellant had also been taken in possession by the Investigation Officer and they were also found containing human blood.

On global and holistic consideration of the direct eye witness account of the incident, medical evidence and other attending circumstances, we form the

opinion that the case of the prosecution against the accused-appellant stood proved beyond reasonable doubt. No the slightest doubt could be entertained that he was the culprit who had mercilessly committed the murder of his wife. Out of two alternative punishments prescribed for the offence of murder, the lesser one of life imprisonment has been awarded by the trial Court.

Resultantly, the appeal being devoid of merit is hereby dismissed. The accused-appellant Kishan Ram is already in jail. He shall serve out the sentence of life imprisonment awarded to him.

Miss. Seema Sirohi who argued the appeal as amicus curiae on behalf of the accused-appellant shall get Rs.3000/- as her legal remuneration.

Let a copy of the judgment alongwith record of the case be immediately sent down to the Court below for needful compliance under intimation to this Court within two months positively.

(M.C.Jain, J.) **(A.A.Desai, C.J.)**

June 16, 2001